

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
OLD TOLEDO BRANDS, INC.,

Plaintiff,

- against -

SCHENKER, INC.,

Defendant.
-----X

07 Civ 9496

CONDITIONAL
ORDER OF DISCONTINUANCE

VICTOR MARRERO, United States District Judge.

Counsel on behalf of the parties, having notified the Court, by letter dated May 15, 2009, a copy of which is attached, that the parties have reached an agreement in principle to settle this action without further litigation, it is hereby

ORDERED, that this action be conditionally discontinued without prejudice and without costs; provided, however, that within thirty (30) days of the date of this Order, the parties may submit to the Court their own Stipulation of Dismissal for the Court to So Order. Otherwise, within such time counsel for plaintiff may apply by letter for restoration of the action to the active calendar of this Court in the event by the deadline indicated the settlement is not consummated. Upon such notification, the defendant shall continue to be subject to the Court's jurisdiction, the Court shall promptly reinstate the action to its active docket and the parties shall be directed to appear before the Court, without the necessity of additional process, on a date within thirty days of the plaintiff's application for reinstatement, to schedule remaining

pre-trial proceedings and/or dispositive motions, as appropriate. This Order shall be deemed a final discontinuance of the action with prejudice in the event plaintiff has not requested restoration of the case to the active calendar within such period of time.

The trial of this action scheduled to commence on June 15, 2009 is canceled but shall be rescheduled as set forth above in the event plaintiff notifies the Court that the parties' settlement was not effectuated and that such trial is necessary to resolve any remaining dispute herein.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: NEW YORK, NEW YORK
15 May 2009



VICTOR MARRERO
U.S.D.J.

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May 15, 2009

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Hon. Victor Marrero
United States District Court
Southern District of New York
500 Pearl Street, Room 660
New York, New York 10007

Re: Old Toledo Brands v. Schenker, Inc.
Docket No. 07 CV 9496 (VM) (GWG)
Our File: 5251

Dear Judge Marrero:

Please take notice that Old Toledo Brands and Schenker, Inc., the parties to the above-referenced action, have settled their dispute, are in the process of codifying a comprehensive settlement agreement, and will stipulate to the dismissal of the above-referenced action with prejudice in the coming days.

As such, this matter will not require adjudication on June 15, 2009, the firm trial date set by your Honor at our last pre-trial conference. Further, considering this matter is settled, the parties will not submit the pretrial submissions called for by your Individual Practices, which

Kennedy Lillis Schmidt & English

May 15, 2009
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Hon. Victor Marrero
United States District Court
Southern District of New York
500 Pearl Street, Room 660
New York, New York 10007

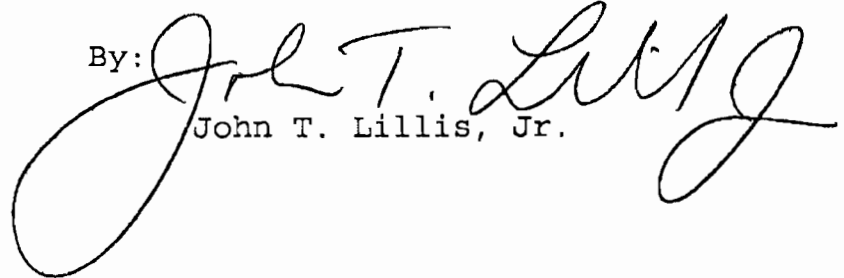
would otherwise be required if this matter required adjudication.

The parties will submit the stipulation of dismissal to your Honor by Friday, May 29, 2009.

Very truly yours,

KENNEDY LILLIS SCHMIDT & ENGLISH

By:


John T. Lillis, Jr.

NTW/

cc: BY EMAIL to Lead Counsel for Plaintiff:

Brendan Collins, Esq.: BCOLLINS@GKGLAW.COM

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